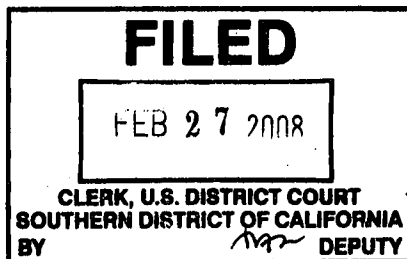


ORIGINAL

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6 Attorneys for Plaintiff
 United States of America
 7
 8



9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)	Criminal Case No. <u>08CR397-W</u>
)	<u>08MJ8022</u>
12 Plaintiff,)	
)	
13 v.)	<u>PLEA AGREEMENT</u>
)	(Fast-Track)
14 ARACELI BARRAZA-BARRAZA (1),)	
)	
15 Defendant.)	

16
 17 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF
 18 AMERICA, through its counsel, Karen P. Hewitt, United States Attorney,
 19 and Douglas Keehn, Assistant United States Attorney, and defendant,
 20 ARACELI BARRAZA-BARRAZA, with the advice and consent of
 21 Richard J. Boesen, counsel for defendant, as follows:

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28 WDK:psd:1/24/08

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I

THE PLEA

A. The Charge. Defendant agrees to waive Indictment and plead guilty to a single-count Information charging defendant with:

knowingly and intentionally importing approximately 44.72 kilograms (98.38 pounds) of marijuana, a Schedule I Controlled Substance, into the United States from a place outside thereof, on or about January 15, 2008, within the Southern District of California, in violation of 21 U.S.C. §§ 952, 960 and 18 U.S.C. § 2.

This plea agreement is part of a "package" disposition. In order for defendant to receive the benefit of this agreement, codefendant(s) DALIA BARRAZA-BARRAZA also must plead guilty at the same time. See Section VI.E. below.

B. Reduction For Packaging. As a concession to and at the request of defendant, and because it will affect the sentencing recommendations (Base Offense Level) in Section X of this agreement, the Government agrees to reduce the amount of the gross weight of the marijuana by 11% to account for the weight of the packaging materials. The resulting net weight of the marijuana will be used only in Section X of this agreement.

C. Early Disposition (Fast-Track) Program. The disposition contemplated by this plea agreement is pursuant to an early disposition (Fast-Track) program authorized by the Attorney General of the United States and the United States Attorney for the Southern District of California.

D. Program Requirements. As part of this plea agreement, and as set forth in Section X.A.5. below, the United States will move the Court to depart downward two offense levels under USSG § 5K3.1 provided defendant complies with the following early disposition

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1 (Fast-Track) program requirements, to which defendant specifically
2 agrees: (1) waives indictment, (2) files or argues no substantive
3 motions, including those described in Fed. R. Crim. P. 12, (3) pleads
4 guilty within 60 days of arraignment on the complaint initially filed
5 against defendant ("arraignment"), (4) if defendant is illegally in
6 the United States, stipulates to removal after completion of the
7 sentence, and (5) waives appeal and collateral attack of the
8 conviction and sentence (see Section XI below).

9 E. Timeliness/Offer Revocation. The disposition contemplated
10 by this agreement is conditioned on (1) the original plea agreement
11 being signed by defendant and defense counsel and returned to
12 Government counsel not later than five business days before the
13 disposition date, and (2) the guilty plea being entered on or before
14 **March 17, 2008**. Further, in the event that defendant seeks a delay
15 in the disposition in this case to a date beyond 60 days of
16 arraignment, the United States may in its sole discretion revoke the
17 disposition offer contained in this plea agreement and seek
18 defendant's indictment on the underlying charge(s).

19 F. Forfeiture. The defendant further agrees to the
20 administrative and/or civil forfeiture of all properties seized in
21 connection with this case which the defendant agrees are subject to
22 forfeiture to the United States pursuant to Title 21, United States
23 Code, Section 881. The defendant further waives her right to receive
24 timely notice of administrative forfeiture as set forth in 18 U.S.C.
25 § 983(a) and waives receipt of all notice of forfeiture in this and
26 all other administrative and civil proceedings. Defendant warrants
27 and represents as a material fact that all property in which she has
28 any interest may be forfeited as described above.

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II

NATURE OF THE OFFENSEA. ELEMENTS EXPLAINED

Defendant understands that the offense to which defendant is pleading guilty has the following elements:

1. Defendant intentionally brought marijuana into the United States; and
2. Defendant knew that it was marijuana or some other prohibited drug.

B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each of the elements of the crime, and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed:

1. That on or about January 15, 2008, defendant knowingly and intentionally drove a 1995 Plymouth Neon (the "vehicle"), bearing Baja California, Mexico license BDW4393, from Mexico into the United States through the Calexico, California East Port of Entry (POE).
2. That at the time the vehicle described above entered the United States through the Calexico East POE, concealed within the vehicle was approximately 39.80 kilograms (87.74 pounds) (net weight) of marijuana, a Schedule I Controlled Substance.
3. That at the time defendant knowingly and intentionally drove the vehicle described above into the United States through the Calexico East POE, she knew that the vehicle contained approximately 39.80 kilograms (87.74 pounds) (net weight) of marijuana, or some other prohibited drug.

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III

PENALTIES

Defendant understands that the crime to which defendant is pleading guilty carries the following penalties:

- A. a maximum 5 years in prison;
- B. a maximum \$250,000 fine;
- C. a mandatory special assessment of \$100.00 per count; and
- D. a term of supervised release of at least 2 years but no more than 3 years. Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring defendant to serve in prison all or part of the term of supervised release.

IV

DEFENDANT'S WAIVER OF TRIAL RIGHTS

Defendant understands that this guilty plea waives the right to:

- A. continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt;
- B. a speedy and public trial by jury;
- C. the assistance of counsel at all stages of trial;
- D. confront and cross-examine adverse witnesses;
- E. present evidence and to have witnesses testify on behalf of defendant; and
- F. not testify or have any adverse inferences drawn from the failure to testify.

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V

DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

The Government represents that any information establishing the factual innocence of defendant known to the undersigned prosecutor in this case has been turned over to defendant. The Government will continue to provide such information establishing the factual innocence of defendant.

Defendant understands that if this case proceeded to trial, the Government would be required to provide impeachment information relating to any informants or other witnesses. In addition, if defendant raised an affirmative defense, the Government would be required to provide information in its possession that supports such a defense. Defendant acknowledges, however, that by pleading guilty defendant will not be provided this information, if any, and Defendant also waives the right to this information. Finally, defendant agrees not to attempt to withdraw the guilty plea or to file a collateral attack based on the existence of this information.

VI

DEFENDANT'S REPRESENTATION THAT GUILTY PLEA IS KNOWING AND VOLUNTARY

Defendant represents that:

- A. Defendant has had a full opportunity to discuss all the facts and circumstances of this case with defense counsel, and has a clear understanding of the charges and the consequences of this plea;
- B. No one has made any promises or offered any rewards in return for this guilty plea, other than those contained in this agreement or otherwise disclosed to the court;
- C. No one has threatened defendant or defendant's family to induce this guilty plea; and

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1 D. Defendant is pleading guilty because in truth and in fact
2 defendant is guilty and for no other reason.

3 E. "Package" Disposition. Further, defendant expressly
4 acknowledges her understanding that the disposition
5 contemplated by this agreement is part of a "package"
6 disposition with her codefendant DALIA BARRAZA-BARRAZA,
7 wherein the Government's obligations under the agreement
8 are conditioned on the performance by defendant and her
9 codefendant of their obligations under the agreement.

VII

AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE SOUTHERN DISTRICT OF CALIFORNIA

10 This plea agreement is limited to the United States Attorney's
11 Office for the Southern District of California, and cannot bind any
12 other federal, state or local prosecuting, administrative, or
13 regulatory authorities, although the Government will bring this plea
14 agreement to the attention of other authorities if requested by the
15 defendant.

VIII

APPLICABILITY OF SENTENCING GUIDELINES

17 Defendant understands the sentence imposed will be based on the
18 factors set forth in 18 U.S.C. § 3553(a). Defendant understands
19 further that in imposing the sentence, the sentencing judge must
20 consult the United States Sentencing Guidelines (Guidelines) and take
21 them into account. Defendant has discussed the Guidelines with
22 defense counsel and understands that the Guidelines are only advisory,
23 not mandatory, and the court may impose a sentence more severe or less
24 severe than otherwise applicable under the Guidelines, up to the
25 maximum in the statute of conviction. Defendant understands further
26 that the sentence cannot be determined until a presentence report has
27 been prepared by the U.S. Probation Office and defense counsel and the
28 Government have had an opportunity to review and challenge the

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1 presentence report. Nothing in this plea agreement shall be construed
 2 as limiting the Government's duty to provide complete and accurate
 3 facts to the district court and the U.S. Probation Office.

4 **IX**

5 **SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

6 This plea agreement is made pursuant to Federal Rule of Criminal
 7 Procedure 11(c)(1)(B). Defendant understands that the sentence is
 8 within the sole discretion of the sentencing judge. The Government
 9 has not made and will not make any representation as to what sentence
 10 defendant will receive. Defendant understands that the sentencing
 11 judge may impose the maximum sentence provided by statute, and is also
 12 aware that any estimate of the probable sentence by defense counsel
 13 is a prediction, not a promise, and is **not binding on the Court**.
 14 Likewise, the recommendation made by the Government is not binding on
 15 the Court, and it is uncertain at this time what defendant's sentence
 16 will be. Defendant also has been advised and understands that if the
 17 sentencing judge does not follow any of the parties' sentencing
 18 recommendations, defendant nevertheless has no right to withdraw the
 19 plea.

20 **X**

21 **PARTIES' SENTENCING RECOMMENDATIONS**

22 **A. SENTENCING GUIDELINE CALCULATIONS**

23 Although the parties understand that the Guidelines are only
 24 advisory and just one of the factors the court will consider under
 25 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly
 26 recommend the following Base Offense Level, Specific Offense
 27 Characteristics, Adjustments and Departures (if applicable):

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- | | | | |
|----|----|---|-----------|
| 1 | 1. | Base Offense Level [§ 2D1.1] | 18 |
| 2 | | (Reflecting a 11% reduction to | |
| 3 | | approximately 39.80 kilograms net weight) | |
| 4 | 2. | Safety Valve (if applicable) | -2* |
| 5 | | [§§ 2D1.1(b) (9) and 5C1.2] | |
| 6 | 3. | Minor Role [§ 3B1.2(b)] | -2 |
| 7 | 4. | Acceptance of Responsibility [§ 3E1.1] | -2 |
| 8 | 5. | Departure for Fast Track [§ 5K3.1] | -2 |
| 9 | | (see paragraph I below) | |
| 10 | | Total Offense Level | 10 |

*If defendant truthfully discloses to the government all information and evidence the defendant has concerning the offense and relevant conduct, and if defendant otherwise qualifies for the "safety valve" in § 5C1.2, the government will recommend a two-level reduction under § 2D1.1(b)(9), and relief from any statutory mandatory minimum sentence pursuant to § 5C1.2. Defendant understands that if she does not qualify for § 5C1.2, defendant may be subject to a statutory mandatory minimum sentence.

B. ACCEPTANCE OF RESPONSIBILITY

Notwithstanding paragraph A.4 above, the Government will not recommend any adjustment for Acceptance of Responsibility if defendant:

1. Fails to admit a complete factual basis for the plea at the time it is entered, or
2. Denies involvement in the offense, gives conflicting statements about that involvement, or is untruthful with the Court or probation officer, or
3. Fails to appear in court, or
4. Engages in additional criminal conduct, or
5. Attempts to withdraw the plea, or
6. Refuses to abide by any lawful court order.

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1 7. Contests or assists any third party in contesting the
2 forfeiture of property(ies) seized or forfeited in
 connection with this case.

3 C. ADJUSTMENTS

4 The parties agree that defendant may request additional downward
5 adjustments and that the Government will oppose any downward
6 adjustment not set forth in Section X, paragraph A above.

7 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

8 The parties have **no** agreement as to defendant's Criminal History
9 Category.

10 E. DEPARTURES

11 The parties agree that defendant may request additional downward
12 departures, including criminal history departures under USSG § 4A1.3.;
13 however, defendant may not file or argue substantive motions,
14 including those described in Fed. R. Crim. P. 12, under this
15 subsection. The parties agree further that the Government will oppose
16 any downward departure not set forth in Section X, paragraph A above.

17 F. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

18 The parties agree that the facts in the "factual basis" paragraph
19 of this agreement are true, and may be considered as "relevant
20 conduct" under USSG § 1B1.3 and as the nature and circumstances of the
21 offense under 18 U.S.C. § 3553(a)(1).

22 G. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

23 The parties agree that the Government will recommend that
24 defendant be sentenced to the **low end** of the advisory guideline range
25 as calculated by the Government pursuant to this agreement. However,
26 if the Court adopts an offense level or downward adjustment or
27 departure below the Government's recommendations in this plea
28 agreement, the Government will recommend a sentence as near as

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1 possible to what the sentence would have been if the Government's
2 recommendations had been followed.

3 H. SPECIAL ASSESSMENT

4 The parties will jointly recommend that defendant pay a special
5 assessment in the amount of \$100.00 to be paid forthwith at time of
6 sentencing. The special assessment shall be paid through the office
7 of the Clerk of the District Court by bank or cashier's check or money
8 order made payable to the "Clerk, United States District Court."

9 I. STIPULATED REMOVAL

10 If defendant is not a United States citizen or national, either
11 before or immediately following sentencing, defendant agrees to an
12 order of removal from the United States entered by Executive Office
13 for Immigration Review or authorized Department of Homeland Security
14 official. Defendant understands that defendant will not be removed
15 until defendant has served any criminal sentence imposed in this or
16 any other case. Defendant further waives any right to appeal, reopen
17 or challenge the removal order.

18 XI

19 DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

20 In exchange for the Government's concessions in this plea
21 agreement, defendant waives, to the full extent of the law, any right
22 to appeal or to collaterally attack the conviction and sentence,
23 including any restitution order, unless the Court imposes a custodial
24 sentence above the greater of the high end of the guideline range
25 recommended by the Government pursuant to this agreement at the time
26 of sentencing or statutory mandatory minimum term, if applicable. If
27 the custodial sentence is greater than the high end of that range, the
28 defendant may appeal, but the Government will be free to support on

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1 appeal the sentence actually imposed. If defendant believes the
2 Government's recommendation is not in accord with this agreement,
3 defendant will object at the time of sentencing; otherwise the
4 objection will be deemed waived.

5 If defendant breaches this plea agreement, at any time, by
6 appealing or collaterally attacking the conviction or sentence, in any
7 way, the Government may prosecute defendant for any counts, including
8 those with mandatory minimum sentences, dismissed or not charged
9 pursuant to this plea agreement. Additionally, the Government may use
10 any factual admissions made by defendant pursuant to this plea
11 agreement in any such prosecution.

12 **XII**

13 **CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT**
14 **THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR SET ASIDE**
THE PLEA

15 This plea agreement is based on the understanding that, prior to
16 defendant's sentencing in this case, defendant has not committed or
17 been arrested for any offense not known to the Government prior to
18 defendant's sentencing. This plea agreement is further based on the
19 understanding that defendant has committed no criminal conduct since
20 defendant's arrest on the present charges, and that defendant will
21 commit no additional criminal conduct before sentencing. If defendant
22 has engaged in or engages in additional criminal conduct during this
23 period, or breaches any of the terms of any agreement with the
24 Government, the Government will not be bound by the recommendations
25 in this plea agreement, and may recommend any lawful sentence. In
26 addition, at its option, the Government may move to set aside the
27 plea.

28 //

XIII

ENTIRE AGREEMENT

This plea agreement embodies the entire agreement between the parties and supersedes any other agreement, written or oral.

XIV

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of this plea agreement shall be effective unless in writing signed by all parties.

XV

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this agreement, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its meaning and effect.

XVI

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation.

KAREN P. HEWITT
United States Attorney

1-31-08
DATED

John T. W. Keehn
DOUGLAS KEEHN
Assistant U.S. Attorney

01-30-08
DATED

Richard J. Boesen
RICHARD J. BOESEN
Defense Counsel

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE.

1/30/08
DATED

Araceli Barraza Barraza
ARACELI BARRAZA-BARRAZA
Defendant